

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4015

B
P/s

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

ELIAS MBIROS,

Appellant-Petitioner

DOCKET NO. 75-4015

v.

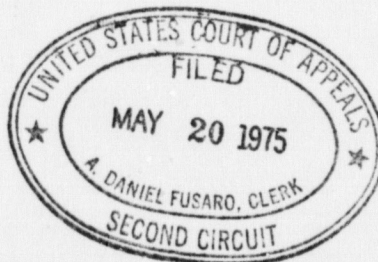
IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

-----X

APPENDIX ON APPEAL FROM DEPORTATION
ORDERED BY BOARD OF IMMIGRATION APPEALS
(ONE MEMBER DISSENTING)

STULL, STULL & BRODY
Attorneys for Plaintiff-Appellant
6 East 45th Street
New York, New York, 10017
(212) 687-7230



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IMMIGRATION AND NATURALIZATION
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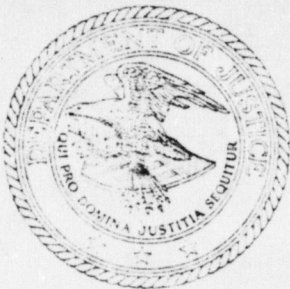
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United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

File: A15 009 096 - Hartford

DEC 26 1974

In re: ELIAS MBIRGS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Richard J. Stull, Esq.
Stull & Stull
Six East 45th Street
New York, New York 10017

CHARGE:

Order: Sec. 241(a)(2), ISN Act (8 U.S.C. 1251
(a)(2)) - Nonimmigrant - remained
longer

APPLICATION: Remand for new hearing

The alien respondent has appealed from the February 4, 1974 decision of an immigration judge in which the respondent was found deportable, but was granted the privilege of voluntary departure. The appeal will be dismissed.

The respondent is a native and citizen of Greece. At his hearing he admitted the factual allegations contained in the Order to Show Cause and conceded deportability. He was accorded the privilege of voluntary departure, the only form of relief for which he appears eligible.

Counsel argues that the respondent, who was not represented at the hearing, was denied his right to legal representation. The record reflects that the immigration judge questioned the respondent regarding the right to counsel, that the respondent initially indicated a desire to be represented, that the respondent further advised the immigration judge that counsel had been obtained but had directed the respondent to proceed with the hearing, and that the respondent then consented to proceed without his attorney.

The respondent's present attorney, who appears to have been retained after the date of the hearing below, has not shown any prejudice to his client. The respondent was not denied due process.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Acting Chairman

Board Member Louisa Wilson dissents without opinion.

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

135 High Street

Hartford, Connecticut 06101

Fee Stamp

In the Matter of:

ELIAS MBIROS
(alias ELIAS BIROS)

File No. A-16 009096

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated February 4, 1974 in the above entitled case.
2. Briefly, state reasons for this appeal. Appellant alleges that the circumstances of his presence in the United States is lawful; that he is not deportable under the Immigration and Nationality Act; and that he was not represented by counsel at a hearing pursuant to Order to Show Cause. Appellant was accompanied to the hearing by Demosthenes Dimopoulos, who is an apprentice carpenter and an acquaintance of the appellant, and is not an attorney. Appellant alleges that under the circumstances, he was deprived of his right to an attorney, as permitted by law.

Based upon the foregoing, appellant respectfully requests that the hearing be reopened.

Appellant is now represented by counsel and an extension of time to file a brief on behalf of the appellant is respectfully requested. Appellant's attorney was engaged to represent appellant, by the appellant's relatives, on Friday evening, February 9, 1974, and intends, in good faith, to brief the questions involved, and to prosecute this appeal.

3. I do (do) (do not) desire oral argument before the Board of Immigration Appeals in

Washington, D. C.

4. I am (am) (am not) filing a separate written brief or statement.

February 11, 1974

Date

Richard J. Stull
Signature of Appellant (or attorney or representative)

Richard J. Stull

Stull & Stull

(Print or type name)

6 East 45th Street

New York, New York, 10017

Address (Number, Street, City, State, Zip Code)

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

File No. A 16009096

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

Elias MBIROS.

Respondent.

In Deportation Proceedings Under Section 242
of the Immigration and Nationality Act

DECISION OF THE
IMMIGRATION JUDGE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before March 6, 1974
(Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to _____
Free on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to _____.

Copy of this decision has been served on respondent.

Appeal: ~~Waived~~-reserved

Date: Feb. 4, 1974

Place: Hartford, Conn.

G. P. Lewis
(Immigration Judge)

*Time for appeal expires
Feb. 14, 1974
G.P.*

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A-16 009 096

ELIAS MBIROS
Aka ELIAS BIROS

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

- Respondent -

Before: EUGENE C. CASSIDY, Immigration Judge

Date: 2/4/74 Place: Hartford, Connecticut

Transcribed by Catherine R. Earle Recorded by Gray Audograph

Official Interpreter Mary Trimoulis

Language Greek

APPEARANCES:

For the Service:

Ralph J. Smith
Trial Attorney

Boston, Massachusetts
Station

For the Respondent:

No one.

1 HEARING HELD ON FEBRUARY 4, 1974 -

2 IMMIGRATION JUDGE TO RESPONDENT THROUGH INTERPRETER:

3 Q What is your name?

4 A Elias Biros.

5 Q Do you understand this lady when she speaks to you in the Greek
6 language?

7 A Yes.

8 IMMIGRATION JUDGE:

9 The official interpreter is Miss Mary Tzimoulis.

10 IMMIGRATION JUDGE TO RESPONDENT:

11 Q This hearing is to determine whether you shall be deported from the
12 United States. At this hearing, you will have an opportunity to show
13 why you should not be deported. Do you understand?

14 A Yes.

15 Q You have the right to be represented here, if you wish, by an attorney
16 or representative of your own choice and without expense to the United
17 States government. Do you wish to have a lawyer or a representative
18 here or do you wish to proceed by yourself without a lawyer or
19 representative?

20 A I would like a lawyer.

21 Q Well, have you gotten a lawyer yet?

22 A Yes.

23 Q Well, no lawyer has notified me that he's appeared ^{INC} in the case - no
24 notice of appearance. Who is your lawyer?

25 A *Attorney FURKIDIS* from Bridgeport.

26 Q Is he going to be here today?

-1-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A No.

2 Q How ~~could~~^{CAN} he represent you if he isn't here? Did you give him the
3 copy of the Order to Show Cause or show him that the hearing is on
4 today?

5 A He said to go today on your own, but I don't need to be there today.
6 Whatever happens today he will take on ^{FROM THERE -} the lawyer.

7 Q Do you wish to proceed without a lawyer?

8 A I would like to have the hearing with a lawyer.

9 Q Did you tell him that? Is he coming today?

10 A The lawyer said it wasn't necessary for him to come today.

11 Q But the hearing is scheduled today.

12 A You can have the hearing without the lawyer. We will proceed without
13 the lawyer today. We did tell the lawyer. It's not my fault. We told
14 us to go ahead. Whatever the Judge tells you, ^{if} take it from there.

15 Q I will show you whatever I'm going to consider in your case. If there
16 is anything shown to you which you think should not be considered, you
17 have the right to say so and to object to it. You will also have an
18 opportunity to offer anything you wish to have considered in your own
19 behalf. Do you understand?

20 A I understand.

21 Q Will you please stand up and raise your right hand. You do solemnly
22 swear the testimony you give is the truth, the whole truth, and nothing
23 but the truth so help you God?

24 A Yes.

25 Q Have a seat. Did you receive a copy of this Order to Show Cause and
26 notice of hearing issued in the case of Elias Mbiros on January 24th?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A Yes.

2 IMMIGRATION JUDGE:

3 The Order to Show Cause is marked EXHIBIT NO. 1.

4 IMMIGRATION JUDGE TO RESPONDENT:

5 Q Has this been read and explained for you in the Greek language so that
6 you know what it says?

7 A Yes.

8 Q You understand it is charged that you are deportable because you
9 were allowed to come into the United States for five days to pass in
10 transit to some other country. You remained beyond five days without
11 the authority of the Immigration and Naturalization Service. This
12 charges you are therefore now deportable. Do you understand the
13 charge?

14 A Yes.

15 Q The Order to Show Cause states first you are not a citizen or national
16 of the United States; and second, you are a native of Greece and a
17 citizen of Greece. Are those statements true?

18 A True.

19 Q Third, you entered the United States at New York, New York on or about
20 November 19, 1973; and four, at that time you were admitted as a
21 transit with a visa, and were authorized to remain in the United States
22 in that status until November 24, 1973.

23 A True.

24 Q And fifth, you have remained in the United States beyond November 24,
25 1973 without authority of the United States Immigration and Naturali-
26 zation Service. Is that true?

-3-

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A True.

2 Q Now, it is charged that because of these facts, you are subject to
3 being deported under the provisions of Section 241(a)(2) of the Immi-
4 gration and Nationality Act, in that, after admission as a nonimmigrant
5 under Section 101(a)(15) of said Act, you have remained in the United
6 States for a longer time than permitted. As I told you, more simply
7 stated, the charge is you are deportable because you were allowed into
8 the United States temporarily to pass in transit and within a limited
9 time, and you have remained without authority for longer than that
10 time. Do you admit that you are deportable on this charge or do you
11 deny that you are deportable on this charge?

12 A I admit it.

13 Q Do you wish to apply to depart voluntarily from the United States
14 without expense to the government instead of being deported?

15 A No, I will leave voluntarily and with my own expense.

16 Q Have you ever been arrested or had trouble with the police in any
17 country other than this arrest by Immigration officers?

18 A No.

19 Q Do you have any close relatives in the United States?

20 A I have a sister.

21 Q Is your sister a United States citizen, a lawful permanent resident,
22 or is she also in some temporary status?

23 A My sister has her green card. She's here year and a half.

24 Q Do you have enough money to buy your own ticket to leave the United
25 States?

26 A Yes.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Are you willing to leave within the time allowed for your departure?
2 A Yes, sure.
3 Q How long do you think it would take you to arrange for your departure?
4 A Whatever you could allow - about six months or more.
5 Q If it is ordered that you be deported, to what country do you wish to
6 go?
7 A Greece.
8 Q Is there anything else at all you wish to say or to have considered
9 before I make a decision in your case?
10 A Yes. The only thing I would love to stay in the United States. We
11 were very poor in Greece, and like I'm living here because I am a
12 poor man.
13 Q I hand you a copy of my decision on Form I-39. This decision is without
14 the entry of an order of deportation, you being permitted to depart
15 voluntarily from the United States without expense to the government
16 on or before March 6, 1974, 30 days from today, or any extension beyond
17 that date as is granted by the District Director and under such con-
18 ditions as he shall direct. There is a further order that, if you fail
19 to depart voluntarily when and as required, the privilege of voluntary
20 departure shall be withdrawn without further notice or proceeding and
21 an order will become immediately effective that you be deported to
22 Greece. Do you understand this decision?
23 A I understand.
24 Q This decision is final unless you wish to take an appeal from it to the
25 Board of Immigration Appeals in Washington. Do you wish to take an
26 appeal from this or will you accept this as a final decision?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A I don't know right this moment. I'd like to speak to the lawyer and
2 answer that question.

3 IMMIGRATION JUDGE:

4 Trial Attorney Ralph J. Smith is present. Mr. Smith, do you wish to
5 take an appeal here?

6 TRIAL ATTORNEY:

7 Yes, your honor, the government would appeal this instance.

8 IMMIGRATION JUDGE TO RESPONDENT:

9 I give you this appeal form, I-290A, in four copies. The appeal, if
10 it is to be filed must be filed in three copies with the District
11 Director in this office on or before February 14, 1974, ten days from
12 today. The fee for the appeal is \$25.00 which should be submitted
13 with it. If an appeal is taken either by you or by the Trial Attorney,
14 the entire record will go to the Board of Immigration Appeals in Wash-
15 ington which will enter the final decision. If no appeal is filed on
16 or before February 14th, the decision entered here today is final.
17 Now, I particularly call your attention to Item #5 in the instructions
18 on this - that there is no appeal for additional time since you were
19 granted at least 30 days for voluntary departure. However, if there
20 is ~~any~~ any other basis on which you wish to appeal, the appeal

21 *will be considered.*

22 The hearing is closed.

23 -----
24 I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF
25 THE FOREGOING PAGES NUMBERED 1 TO 6 ARE A COMPLETE AND ACCU-
26 RATE TRANSCRIPT OF THE ABOVE DESCRIBED PROCEEDING. (Some
phrases were inaudible.)

Catherine R. Cook
Transcriber 2/22/74

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service



COPY RECEIVED
Paul J. Curran
UNITED STATES ATTORNEY
5/20/75